In the High Court of Judicature for Rajasthan
Jaipur Bench

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Cr. Misc. Petition No.1147/2001
Arvind K. Jain Versus State & Atma Singh

Date of Order ::: 20/09/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. Alok Sharma, for petitioner (accused)
Mr. Arun Sharma, Public Prosecutor.
Mr. Rajiv Sogarwal for respondent No.2.

Petitioner has invoked inherent powers U/s 482 CrPC for quashing proceedings initiated against him for offence U/s 147, 295-A, 298, 330 & 109, IPC in Cr.Case No.393/83 pending before Chief Judl. Mag. Bharatpur who vide order dt. 17/03/98 dismissed application of respondent No.2 filed for withdrawing.

Respondent No.2 filed a complaint against petitioner and (3) others before CJM Bharatpur on 17/12/1982 alleging inter-alia that for participating in “Kirtan” on 07/11/82 he went to Gurudwara and on way back, was informed by one Mohakkam Singh that in police firing at Ghana Bird Sanctuary, Bharatpur, certain persons died and others injured; and being Sarpanch of Gram Panchayat, Adhapur, he made way to the Hospital to take care of the injured – at that time,

without his provocation, the police started hurling abuses against his religion and caste and that apart, was beaten while taking off his turban & pulling hairs also. Certain allegations were also levelled.

On complaint ibid, learned Magistrate took cognizance of offences U/Ss 147, 295-A, 298, 330 & 330/109, IPC against petitioners. Pendente trial, respondent NO.2 filed an application U./s 257, CrPC on 18/05/97 for withdrawing complaint against petitioner. But the learned Magistrate dismissed this application on the premise that complaint being warrant case, application U/s 257, CrPC is not maintainable and offences being not compoundable, no orders can be passed. Even before this Court, after service of notice, Counsel on behalf of complainant (respondent No.2) on instructions submits that his client being still strict to his application is not inclined to proceed further against petitioner any further.

Public Prosecutor submits that there is no provision under Code of Criminal Procedure for compounding such offence; yet can be considered by this Court in exercise of inherent powers U/s 482, CrPC.

Only grievance raised by petitioners herein is to quash criminal proceedings on the basis of application for withdrawal filed by complainant U/s 257, CrPC for compounding offences alleged. In support, Counsel placed reliance on the judgments of Apex Court **in BS Joshi Vs. State of Hariana (2003(4) SCC 675)** and of this Court in **Majlis Vs. State (2007(1) CrLR (Raj) 345).**

I have considered rival contentions of both the parties and with assistance examined material on record. S.320, CrPC depicts that complainant has significant role to play in compounding of offence and in such like cases, criminal proceedings are quashed on the basis of compromise arrived at between the parties. Courts are not obligating difference between criminal act and civil wrong. Inclusion of a new Chapter on Plea Bargaining in the Code (CrPC) clearly proves that legislature in its wisdom is trying to find alternatives to reduce burden of criminal cases on trial Courts. The exercise of inherent power is another mode to achieve such goal. It is true that inherent powers should be used literally but in appropriate cases. However, bar contained in S.320(9) CrPC, inherent powers U/s

482 CrPC can be exercised for quashing criminal proceeding on the basis of compromise reached between parties. In **BS Joshi Vs. State of Haryana (**supra), Apex Court observed that notwithstanding bar contained in S.320, CrPC, inherent powers U/s 482, CrPC can be exercised to quash criminal proceedings on the basis of compromise reached between the parties but has to be examined on the facts of each case and S.320, CrPC does not limit or affect powers U/s 482, CrPC. Section 482 CrPC starts with a non-obstante clause and proclaims, "nothing in this Code shall be deemed to limit or affect inherent powers of the High Court..."; and while taking note of inter-relationship between Sections 482 & 320, CrPC, one cannot loose sight of non-obstante clause. A co-ordinate Bench of this Court in **Majlis Vs. State** (supra) after taking note of a series of decision on the issue in question, observed ad infra:

> **"26**. In conclusion, notwithstanding the bar contained in Section 320(9) of the Code, the inherent power under section 482 of the Code can be exercised for quashing a criminal proceeding on the basis of the compromise reached between the complainant and the accused."

In instant case, complainant has filed application U/s 257 CrPC but this being a case of warrant trial is covered under Chapter XIX CrPC and S.245, CrPC, in fact can be attracted to withdraw the complaint filed against petitioner. Merely because wrong provision has been mentioned in the application, that will not in any way construe that it is not maintainable particularly when provision in the Code is available for entertaining such application. In such circumstances, to continue with proceeding will be of no legal significance and in view of what has been observed (supra), this Court considers it proper to quash criminal proceedings pending against petitioner.

Consequently, misc. petition succeeds and is hereby allowed. Proceedings initiated against petitioner in Cr. Case No.393/83 pending before Chief Judl. Magistrate, Bharatpur are hereby quashed and set aside.

(**Ajay Rastogi), J.**